

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0107P

Withholding Tax

For the calendar year ended December 31, 2002,

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late filing of a WH-3 withholding tax return for the calendar year ended December 31, 2002.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the error was the result of the management changes and difficulty receiving payments from clients. Furthermore, the taxpayer claims to have a very good payment history. The taxpayer also stated that there were health problems during this period.

The Department realizes that occasionally a taxpayer will have health problems resulting in failure to timely file a return. In the instant situation, the taxpayer has a pattern of late filed returns. After the first late filed return, the taxpayer should have had alternative procedures in place. The procedures would have provided for the timely filing of returns.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The taxpayer's arguments taken together do not rise above negligence.

FINDING

The taxpayer's penalty protest is denied.